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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,960	11/21/2000	Michael Brines	10165-009-999	6595

20583 7590 03/08/2004

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EXAMINER	
DEBERRY, REGINA M	
ART UNIT	**PAPER NUMBER**
1647	

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	**Application No.** 09/716,960	**Applicant(s)** BRINES ET AL.	
	Examiner Regina M. DeBerry	**Art Unit** 1647	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.☒ A Notice of Appeal was filed on *24 December 2003*. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.☒ The proposed amendment(s) will not be entered because:

(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☒ they raise the issue of new matter (see Note below);

(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: *See Continuation Sheet*.

3.☐ Applicant's reply has overcome the following rejection(s): _____.

4.☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6.☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.☒ For purposes of Appeal, the proposed amendment(s) a)☒ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: *1-6,8 and 9*.

Claim(s) withdrawn from consideration: _____.

8.☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9.☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10.☐ Other: _____

Continuation of 2. NOTE: The current claims are drawn to a method for the treatment of a neurodegenerative condition comprising administering peripherally to a mammal an effective non-toxic amount of EPO for the protection of an excitable tissue. The new claims are drawn to the method of claim 1 wherein said EPO is administered prior to a medical or surgical procedure. The newly entered claims raise issues that would require new considerations and searches of administering EPO prior to medical and surgical procedures and could possible raise new rejections.

Continuation of 5. does NOT place the application in condition for allowance because: Claims 1-6, 8 and 9 stand rejected under 35 U.S.C. 112, first paragraph because the specification while being enabling for a method for protection of an excitable tissue comprising administering a non-toxic amoun of EPO peripherally to a mammal suffering from a neurodegenerative condition does not reasonably provide enablement for a method for the treatment of a neurodegenerative condition comprising administering peripherally to a mammal an effective non-toxic amount of EPO fot the protection of an excitable tissue. The basis for this rejection was set forth at pages 2-5 of the last Office Action (27 July 2003).

Applicants state that the rejection has been overcome by the amendment to claim 1 to delete methods for prevention. Applicants arguments have been considered but are not deemed persuasive because as was stated in the last Office Action, neurodegenerative condition is a broad term which encompasses diseases such as Alzheimers and Parkinsons (Office Action 27 July 2003, page 4, lines 5-10 and Office Action, 26 August 2002; page 6, lines 8-11). The animal models as taught in the specification would not correlate to a method for the treatment of "all" or "any" neurodegenerative conditions. The scientific reasoning and evidence as a whole indicates that the rejection should be maintained.

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